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Attorneys For Defendants  
National Vending Systems, Inc., Mad Dog Energy  
Products, Inc., Richard Black, Gary Luckner,  
Michael Stein And Mel Hendrix

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
EASTERN DIVISION - RIVERSIDE COURTHOUSE

WOODARD INVESTMENTS, INC. an  
Oregon corporation, and KEITH  
WOODARD, an individual,

Plaintiffs,

vs.

NATIONAL VENDING SYSTEMS,  
INC., a California  
corporation; MAD DOG ENERGY  
PRODUCTS, INC., a California  
corporation; RICHARD BLACK, an  
individual; GARY LUCKNER, an  
individual; MICHAEL STEIN, an  
individual; MEL HENDRIX, an  
individual; and RICHARD ALLEN,  
an individual,

## Defendants.

Case No. EDCV 08-01805 SGL (MANx)

SUPPLEMENTAL DECLARATION OF  
RICHARD ALLEN BLACK IN SUPPORT OF  
DEFENDANTS' REPLY TO PLAINTIFFS'  
OPPOSITION TO MOTION TO SET ASIDE  
RIGHT TO ATTACH ORDERS, QUASH  
WRITS OF ATTACHMENT AND RELEASE  
PROPERTY LEVIED UPON

[Reply To Opposition To Motion To Set Aside Right To Attach Order, Etc. Filed Concurrently Herewith]

Date: August 18, 2009  
Time: 10:00 a.m.  
Courtroom: 580  
Roybal Federal Bldg.  
255 E. Temple St.  
Los Angeles, CA 90012

T. RICHARD ALLEN BLACK, declare as follows:

1. I am a party to this action. I have personal,

1 firsthand knowledge of the matters set forth in this Declaration  
2 and, if called upon to do so, I could and would competently testify  
3 thereto.

4       2. I make this Supplemental Declaration in support of  
5 the "Reply" of defendants MAD DOG ENERGY PRODUCTS, INC. ("Mad Dog")  
6 and NATIONAL VENDING SYSTEMS, INC. ("NVS") [collectively,  
7 "Defendants"] to the "Opposition" (the "Opposition") of plaintiffs  
8 WOODARD INVESTMENTS, INC. ("Woodard Investments") and KEITH WOODARD  
9 ("Mr. Woodard") [collectively, "Plaintiffs"] to Defendants' "Motion  
10 To Set Aside Right To Attach Orders, Quash Writs Of Attachment And  
11 Release Property Levied Upon" (the "Motion").

12       3. I have reviewed Plaintiffs' Opposition papers,  
13 including without limitation, the Supplemental Declaration of Keith  
14 Woodard ("Supp. Woodard Dec."), Supplemental Declaration of Jason  
15 Kensey ("Supp. Kensey Dec."), Declaration of Sherri Biethman  
16 ("Biethman Dec."), Declaration of James Koepsell ("Koepsell Dec."),  
17 Declaration of Jim Rogers ("Rogers Dec.") and the Declaration of  
18 Dan Vitt, with its accompanying Exhibit "12" (the "Vitt  
19 Dec.") [collectively, the "Declarations"]. While I believe that  
20 there are a number of misstatements in such Declarations, rather  
21 than get into a never-ending "tit for tat" exchange with Mr.  
22 Woodard, I stand by my previous Declaration herein which is  
23 supported by the documents previously introduced herein by  
24 Defendants. Accordingly, I will address only a few of the  
25 misleading or incorrect statements made in Plaintiffs' Opposition  
26 and latest Declarations.

27 / /

28 / /

1           PLAINTIFFS' REJECTION OF PLANS SET FORTH IN MARKETING MATERIALS AND  
2           NEGOTIATION OF MASTER DISTRIBUTOR RIGHTS

3           4. The "Marketing Materials", attached as Exhibit "1"  
4 to Plaintiffs' Attachment papers, including the "Energy Center  
5 Price Sheet" and sample "Purchase Agreement" do not refer to, or  
6 include, any "Master Distributor" rights to any exclusive  
7 territories. Mr. Woodard rejected the plans set forth on the  
8 "Energy Center Price Sheet". He informed me that he did not want  
9 to just purchase machines, but that he wanted to be a "Master  
10 Distributor" to supply product to sub-distributors who owned their  
11 own machines. This was something new and additional, and was not  
12 offered in the plans set forth in the "Energy Center Price Sheet".  
13 He explained that he had prior experience as a master distributor  
14 with his juice bars.

15           5. Mr. Woodard then negotiated a deal with NVS to  
16 become the "Master Distributor" in the Oregon territory and entered  
17 into the First Purchase Agreement for a total purchase price of  
18 \$100,080. Part of that deal was that he could buy the product at  
19 the reduced rate of 12 cents per candy and sell them to sub-  
20 distributors for 15 cents each, making an additional 3 cent per  
21 candy profit as the Master Distributor. The contract also included  
22 very express clauses stating that there were no earnings estimates  
23 or guarantees and no buy-back protections. [See, Defendants' Exh.  
24 "1".]

25           6. Mr. Woodard then negotiated a deal to become the  
26 Master Distributor in the Washington area and entered into the  
27 Second Purchase Agreement for a total purchase price of \$150,000.  
28 It contained similar provisions. [See, Defendants' Exh. "4".]

1           7. In December 2007, Plaintiffs negotiated their third  
2 master distributor contract with Defendants and entered into the  
3 Master Distributor Agreement upon which Plaintiffs base their  
4 Attachment. [See, Defendants' Exh. "7".]

5           BIETHMAN DECLARATION AND AMERICAN VENDING SYSTEMS

6           8. With respect to the Biethman Dec., Mrs. Biethman  
7 states that she purchased vending machines from American Vending  
8 Systems ("AVS"), but then incorrectly states that I am a principal  
9 of AVS. This is not true. I am not, and never have been, a  
10 principal, owner, officer, director, or operator of AVS. Neither  
11 of Defendants has ever been an owner, principal or operator of AVS.  
12 According to my understanding in the industry, AVS has been in the  
13 business of selling snack and beverage vending machines since the  
14 1980's. It is owned and operated by Louis Gubitosa. Defendants  
15 supplied product to certain customers of AVS to stock certain of  
16 the vending machines such customers purchased from AVS. I have at  
17 various times acted as an independent consultant to AVS, but never  
18 a principal.

19           9. Mrs. Biethman, as a vending machine owner and  
20 customer of AVS, and I, as a principal of Mad Dog, had discussions  
21 regarding her purchasing product to stock her AVS machines. We  
22 also discussed the possibility of her purchasing the Master  
23 Distributor rights to certain territories. She was interested in  
24 Idaho, but I told her that the Master Distributor rights to that  
25 territory were already owned by Plaintiffs.

26           10. In or about March 2008, Mrs. Biethman and her  
27 husband determined to purchase the Master Distributor rights to  
28 Montana, Wyoming and Texas, with rights of first refusal to Arizona

1 and Colorado, for a total initial payment amount of \$175,000. In  
2 this regard, they sent Mad Dog a deposit check in the amount of  
3 \$2,500 which included their notation "For Master Distributor TX,  
4 WY, MT". A true and correct copy of this check is attached as  
5 Exhibit "19" hereto and is incorporated herein by this reference.  
6 Ultimately, Mrs. Biethman determined not to acquire the Master  
7 Distributor rights to Texas, Wyoming and Montana, and Mad Dog  
8 returned to her the full amount of her check.

9 KOEPSELL, ROGERS AND VITT DECLARATIONS

10 AND INDEPENDENT VENDING CONCEPTS

11 11. I am not, and never have been, a principal, owner,  
12 officer, director, or operator of Independent Vending Concepts,  
13 L.C. ("IVC"). Neither of Defendants has ever been an owner,  
14 principal or operator of IVC. According to my understanding in the  
15 industry, IVC sells vending machines and Defendants have sold  
16 product to its customers to stock certain of those vending  
17 machines. The Koepsell Dec., Rogers Dec. and Vitt Dec. all state  
18 that they purchased their machines from IVC. Mad Dog was only a  
19 supplier of the product to these individuals.

20 12. With respect to the Rogers Dec., I did not make the  
21 representations to him regarding the amount of money I was making  
22 or regarding my children being able to purchase new cars inasmuch  
23 as they are not even old enough to drive. Mr. Rogers states that  
24 his business only lasted a few months before it was forced to close  
25 supposedly due to poor sales. However, Mad Dog's records indicate  
26 that Mr. Rogers purchased product in January 2008, twice in April  
27 2008, and then again in September 2008 - nine months after his  
28 first purchase. True and correct copies of correspondence, a check

and invoices evidencing such purchases are collectively attached as Exhibit "20" hereto and are incorporated herein by this reference.

13. With respect to the Vitt Dec., the documents attached as Exhibit "12" state that they are from IVC, Kyle Erickson of EnergyVendingBusiness.com, and "Spike! Energy Systems". They were not provided to Mr. Vitt by Mad Dog or NVS.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on August \_\_\_, 2009, at Temecula, California.

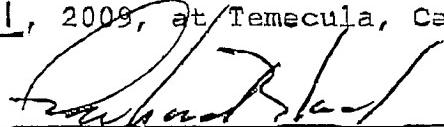
RICHARD ALLEN BLACK

1 and invoices evidencing such purchases are collectively attached as  
2 Exhibit "20" hereto and are incorporated herein by this reference.

3           13. With respect to the Vitt Dec., the documents  
4 attached as Exhibit "12" state that they are from IVC, Kyle  
5 Erickson of EnergyVendingBusiness.com, and "Spike! Energy Systems".  
6 They were not provided to Mr. Vitt by Mad Dog or NVS.

7           I declare under penalty of perjury under the laws of the  
8 State of California that the foregoing is true and correct.

9           Executed on August 11, 2009, at Temecula, California.

10             
11 RICHARD ALLEN BLACK

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# EXHIBIT 19

1960

00-9290/3118  
02

Date 2/19/08

JARED E. BIETHMAN  
SHERRI P. BIETHMAN  
PH. (208)508-3164  
673 W BANKSIDE DR  
EAGLE, ID 83616

Pay to the  
MAP Dog Enzymes Plaintiff \$ 2500.00  
Order of  
Two Thousand and five hundred Dollars

AA Credit Union

DALLASPORT NORTH, TX  
MAP Dog Enzymes  
For  
[REDACTED]

*Cal Bit*

## EXHIBIT 20

Jim Rogers  
312 S. Wall St.  
Mountain Grove, MO 65711

01/03/08

Mad Dog Energy  
28581 Front St.  
Temeculah, CA 92590

Unit 107

Dear Sirs,

As per our phone conversation of Jan. 2, 2008, enclosed please find check in the amount of \$2345.00 for my first purchase of Buzz Bite energy chews. This amount reflects a \$15.00 deduction for the cost of FedEx overnight. I was told by Richard that this would be covered by Mad Dog energy, hence the deduction from the original amount of \$2360.00 for the product.

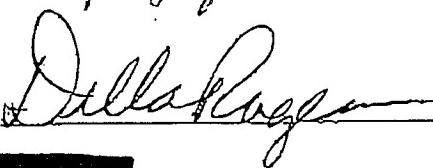
Please ship ASAP to the above address in Mountain Grove, MO.

If you have any questions, please call me at (417) 349-0171. I hope to be doing much business with you in the near future.

Regards,

Jim Rogers

Printed by Bank-A-Copy  
SAFETY - NO. 24

	JAMES ROGERS DELLA ROGERS PH. 417-349-0171 417-349-0870 512 S WALL MOUNTAIN GROVE, MO 65711	2147 1-3 2008 80-1162/815
Pay to the Order of <u>MAD DOG ENERGY</u> \$ 2345 <sup>00</sup>		
<u>Two thousand three hundred forty-five DOLLARS</u>		
 Legacy Bank and Trust		
FOR Buzz Bites ORDER		
10 [REDACTED] 11 [REDACTED] 12 [REDACTED]		

16 case's

Mad Dog Energy Products, Inc.

41800 Enterprise Circle So., #F  
Temecula, CA 92590**Invoice**

Date	Invoice #
4/25/2008	406

**Bill To**

James & Della Rogers  
312 S. Wall Street  
Mountain Grove, MO 65711

**Ship To**

James & DeJla Rogers  
312 S. Wall Street  
Mountain Grove, MO 65711  
(417) 349-0171

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project			
			4/30/2008	Federal Express					
Quantity	Item Code	Description			Price Each	Amount			
4	Chocolate Buzz Bites	Product for Machines Out-of-state sale, exempt from sales tax			236.00 0.00%	944.00 0.00			
621980960004867									
						<b>Total</b> \$944.00			

# Invoice

## Mad Dog Energy Products, Inc.

41800 Enterprise Circle So., #F  
Temecula, CA 92590

Date	Invoice #
4/28/2008	410

**Bill To**

James & Della Rogers  
312 S. Wall Street  
Mountain Grove, MO 65711

**Ship To**

James & Della Rogers  
312 S. Wall Street  
Mountain Grove, MO 65711  
(417) 349-0171

Mad Dog Energy Products, Inc.

41800 Enterprise Circle So., #F  
Temecula, CA 92590**Invoice**

Date	Invoice #
9/17/2008	1081

**Bill To**

James & Della Rogers  
1435 South Rogers Avenue  
Springfield, MO 65804

**Ship To**

James & Della Rogers  
1435 South Rogers Avenue  
Springfield, MO 65804  
(417) 349-0171

P.O. Number	Terms	Rep	Ship	Via	F.O.B.	Project			
			9-22-08 9/17/2008	Federal Express					
Quantity	Item Code	Description			Price Each	Amount			
1	Chocolate Mint Bu...	Product for Machines Out-of-state sale, exempt from sales tax			236.00 0.00%	236.00 0.00			
621980960013036						CM - 1 case 20165			
						<b>Total</b> \$236.00			

PROOF OF SERVICE

STATE OF CALIFORNIA )  
COUNTY OF ORANGE )

I, the undersigned, say: I am employed in the County of Orange, State of California. I am over the age of 18 years and am not a party to the within action. My business address is 1920 Main Street, Suite 1080, Irvine, California 92614.

I served the foregoing documents described as:

**SUPPLEMENTAL DECLARATION OF RICHARD ALLEN BLACK IN SUPPORT OF  
DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO SET ASIDE  
RIGHT TO ATTACH ORDERS, QUASH WRITS OF ATTACHMENT AND RELEASE  
PROPERTY LEVIED UPON**

on the interested parties in this action in the following manners:

**VIA ELECTRONIC ACCESS:**

I hereby certify that on **August 11, 2009**, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system on the following:

**Jennifer L. Brockett**  
**Davis Wright Tremaine LLP**  
**jenniferbrockett@dwt.com**

**David C. Rocker**  
**Davis Wright Tremaine LLP**  
**davidrocker@dwt.com**

VIA OVERNIGHT EXPRESS MAIL

I deposited such envelope into the Overnight Express Mail at Irvine, California.

Jennifer L. Brockett  
DAVIS WRIGHT TREMAINE LLP  
865 South Figueroa Street, Suite 2400  
Los Angeles, CA 90017

**David C. Rocker**  
**DAVIS WRIGHT TREMAINE LLP**  
**1300 S.W. Fifth Avenue, Suite 2300**  
**Portland, OR 97201**

Executed on **August 11, 2009** at Irvine, California.

RICK A. VARNER